

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed November 23, 2009. Claims 17, 36-44, 50, and 52-59 were pending and rejected in view of cited art. Claims 17, 36, and 50 are amended. Claims 17, 36-44, 50, and 52-59 remain pending in view of the above amendments, with claims 17, 36, and 50 being independent.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

B. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 17, 37, 39-44, 50, 52, and 54-59 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,907,893 (*Zadno-Azizi*) in view of U.S. Patent No. 6,942,691 (*Chuter*). Claim 36 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Zadno-Azizi* in view of U.S. Patent No. 5,843,167 (*Dwyer*). Claims 38 and 53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Zadno-Azizi* in view of *Chuter*, as applied to claims 17 and 50, further in view of U.S. Patent No. 4,214,587 (*Sakura*).

Applicant respectfully submits that the independent claims as presented for reconsideration are not anticipated nor made obvious by *Zadno-Azizi* either singly or in combination with any other reference of record when *Zadno-Azizi* is taken as a whole.¹ In particular, *Zadno-Azizi* discloses methods for the manufacture of radially expansible stents (Title). For many described articles, such as article 600 of FIGS. 20 and 21, the article can be

¹ Any amendments to claims other than those which are expressly relied upon in overcoming the rejections on art have been made simply to insure consistency in claim language, to correct typographical or grammatical errors, or to correct other errors of a formal, non-substantive nature, but not to otherwise narrow the claims in scope for any reason.

everted to form "a cylindrical wall segment comprising a serpentine element" (col. 12, ll. 66-67). "During or subsequent to the everting step, the article may be treated in order to change certain physical properties. For example, the article may be heat treated in order to reduce stress, change elasticity, change appearance, or the like" (col. 4, ll. 11-14). "In the case of shape memory alloys, it will usually be necessary to heat treat the article in order to provide the desired memorized shape as well as to set the transition temperature" (id. at ll. 14-17).

As further taught by *Zadno-Azizi* "[i]f it is desired that the stent [formed from the article(s)] be superelastic at room temperature or at body temperature, it is heat treated so that if deformed the stent will have a desire to come back to the shape it was in at the time it was heat treated," such as the cylindrical or tapered shape upon the mandrel (col. 9, ll. 12-15). Once "the patterns have been heat treated . . . , the mandrel with the heat treated patterns thereon can be permitted to cool to room temperature after which the sleeve 42 [which "hold[s] the spaced-apart patterns in place on the mandrel"] can be removed" (col. 8, ll. 53-54 and 60-63). The pattern, once cooled, "can then be removed from the mandrel to provide the stents 21 of the type shown in FIG. 1", such as the cylindrically-shaped stent (see col. 8, ll. 63-65). Accordingly, *Zadno-Azizi* describes the planar articles having the shaped pattern being formed into cylindrically-shaped or tapered stents. No mention is made of the articles, once cylindrical or tapered being deformable back to the planar article or "resiliently deformable" from a planar configuration to a transverse configuration.

In fact, it appears that *Zadno-Azizi* teaches away from such resilient deformability because, as referenced with respect to "pattern 32", that once the pattern is cooled "[t]he pattern 32 can then be removed from the mandrel to provide the stents 21 of the type shown in FIG. 1" which have a cylindrical configuration (see col. 8, ll. 63-65). Furthermore, the Abstract indicates that *Zadno-Azizi* teaches "[m]ethods and articles for fabricating expansive stents having generally cylindrical configurations with a pattern therein include interconnecting portions from a generally planar sheet of material . . ." (emphasis added). Therefore, the intended purpose appears to be creating stents having generally cylindrical configurations and teaches away from "the body being *resiliently deformable* from a substantially planar configuration lying generally in the plane towards a transverse configuration extending out of the plane, *with the body being configured to return toward the substantially planar configuration*" as claimed in independent claims 17, 36, and 50.

Thus, *Zadno-Azizi* clearly does not anticipate or make obvious applicant's claimed device (e.g., see claims 17, 36, and 50) which requires, *inter alia*, "the body being *resiliently deformable* from a substantially planar configuration lying generally in the plane towards a transverse configuration extending out of the plane, *with the body being configured to return toward the substantially planar configuration.*" (emphasis added).

Accordingly, for at least the reasons noted, independent claims 17, 36, and 50 and the claims depending therefrom² are neither anticipated nor made obvious by *Zadno-Azizi*, either singly or in combination with any other prior art of record³, and thus reconsideration and withdrawal of the rejection is respectfully requested.

C. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner

² Emphasis herein of the differences between the independent claims 17, 36, and 50 and the prior art are equally applicable to the dependent claims 37-44 and 51-59, but this does not mean, on the other hand, that these are necessarily the *only* differences between the claimed invention and the prior art of record. Applicant thus does not acquiesce in any asserted rejections of the dependent claims.

³ *Chuter*, *Dwyer*, and *Sakura* were cited as secondary references. *Chuter* was cited for the proposition that it discloses "a plurality of tines . . . that are generally parallel with the central axis in the transverse configuration. The curved region . . . limits the penetration depth of the tines. The tines are used to limit migration when the device is implanted in the body" (Office Action, p. 4). *Dwyer* was cited for the proposition that it discloses "a plurality of arcuate tines . . . that are generally parallel to the longitudinal axis of the device in the transverse configuration in order to provide the advantage of preventing movement of the device along the vessel wall," and *Sakura* was cited for the proposition that it discloses "tines of different lengths . . . in order to have the different tines each serve a different purpose" (Office Action, p. 5). That said, none of these references otherwise add anything in terms of reading on the claims as amended herein, particularly in reference to those claimed limitations noted above which clearly define over *Zadno-Azizi*. Thus, even assuming *arguendo* that any of the references to *Chuter*, *Dwyer*, and

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finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 23rd day of March, 2010.

Respectfully submitted,

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